

**FLATHEAD COUNTY BOARD OF ADJUSTMENT
MINUTES OF THE MEETING
AUGUST 2, 2022**

**CALL TO ORDER
6:25 PM**

A meeting of the Flathead County Board of Adjustment was called to order at approximately 6:23 p.m. at the 2nd Floor Conference Room of the South Campus Building, 40 11th Street West, Suite 200, Kalispell, Montana. Board members present were Tom Davis, Tobias Liechti, Cal Dyck, and Roger Noble. Jim Dyon had an excused absence. Erik Mack, Erin Appert, and Zachary Moon represented the Flathead County Planning & Zoning Office.

There were 15 members of the public in attendance at the meeting and 1 member of public in attendance over Zoom.

**APPROVAL OF
MINUTES
6:25 PM**

Noble motioned, seconded by Liechti, to approve the May 3, 2022 minutes with one correction, the date at the top of the page.

The motion passed unanimously by quorum.

Noble motioned, seconded by Liechti, to approve the June 7, 2022 minutes as written.

The motion passed unanimously by quorum.

**PUBLIC COMMENT
(Public matters that are
within the jurisdiction of the
Board 2-3-103 M.C.A)
6:25 PM**

None

**BOARD DISCLOSURE
OF ANY CONFLICT OF
INTERESTS
6:26 PM**

None

**SANDSTROM, LLC
(FZV-22-04)
6:26 PM PM**

A request from Sandstrom, LLC for a variance to Section 3.12.040(4) of the Flathead County Zoning Regulations (FCZR), to the maximum height for a principal and accessory structure. The subject property is zoned *R-3 (One-Family Residential)* and is located at 120 Sun Rise Drive, Whitefish, MT within the Rural Whitefish Zoning District.

STAFF REPORT
6:26 PM

Zachary Moon reviewed the Staff Report FZV-22-04 for the board.

BOARD QUESTIONS
6:29 PM

None

**APPLICANT
PRESENTATION**
6:30 PM

Tom Smith, 120 Sunrise Drive, explained that his project was a single-family home and explained the slope of the parcel. He showed a detailed drawing of the plans for the building and explained the topography and the access as well as the building location. The site was selected based on the information they had. He showed the slope of the land and said they were trying to minimize the cutting into the hill, they didn't want to damage the hillside. The driveway was already cut in, the road is steep, and the utilities are already there.

BOARD QUESTIONS
6:52 PM

Davis asked about the accessory structure's location.

Smith said it was going to sit further back, toward the hillside. He pointed out the location on the screen.

Davis asked about the 18-foot sidewall height.

Smith said they wanted it to fit a motorhome inside and were building in an extra few foot to be able to pull it in.

Rick Parmeter, 4 Ridgecrest Court, was the builder, and said he builds this type of home all over the country and will use all local subcontractors. He stated they went over the property extensively, looking for the best possible place to put their home, and came up with this location. They wanted a location without a lot of stress and didn't want to destroy a lot of trees. He was available for questions if the board had any.

PUBLIC COMMENT
6:54 PM

Mitch Robinson, 225 Good Medicine Drive, said he is a neighbor, and he has no objections to the application.

BOARD DISCUSSION
6:55 PM

Davis said as far as the property goes, he thought it was a unique project. He said when he was looking through the packet, he had some concerns of the overall height. He would like to see a little more finality to what it would settle in at. He commented there was a big difference dropping the driveway one foot versus three feet. He stated at some point they could make some changes where this

variance wouldn't even be applicable. The structure doesn't seem overbearing, but he had some concerns and would like to know exactly where the structure would settle in. He was leaning towards shelving it and having the applicant come back with more detailed specifics about where it will end up, or he was probably leaning towards voting against it.

Noble said he had the same opinion as Davis. It seemed like there were a lot of 'what ifs' here with actual final design size and height. Usually when the board reviews these, those are already pinned down. He could see why the applicant is doing what he is doing, taking advantage of the topography, and building it into the hill slope to be a nice design. He had never seen an application like this come in front of the board that has nine negatives out of nine findings-of-fact so they would have to rewrite all nine findings-of-fact and felt it would be in best interest of the applicant to table or withdraw the application until they had more specific information.

Liechti said on the surface it's a reasonable request, but he agreed with Noble, having to change nine negative findings and going through what they could possible change would be tough to switch some of them to a positive finding and they need all nine to recommend approval. On the other side, they were talking about the building height over the existing natural slope because of the topography, theoretically the owner could take the building down deeper and meet all the requirements, but he didn't know if it would be the best in the long run. It would be a long road to reasonably change all nine findings to positive.

Dyck agreed that it's a beautiful structure and a great concept. One of the things they hadn't addressed was the accessory structure. With the nine findings that are negative, he didn't see how they could walk through that. He suggested there were one of two things that could happen, either the board votes on the application or they could come back with some more detail of explaining specifically what the actual numbers are going to read. At this time, it's a little too vague and that's what concerns the board.

Smith commented that they wouldn't have the answers until they actually grade the property. He wanted to know if he postponed the application, should he have the excavator push some of the dirt so they could come back and say what it's going to be, or do they need to finalize exactly how it's going to be measured between the foundation wall and the actual structures and that bottom slope.

Dyck said when they request a variance, it explains specifically where the measurement comes from, he believed from the dripline of the structure to the ground. That would be the criteria on getting the actual elevation.

Mack said it's from any part of the roof, from the natural grade, so if he is digging down six feet, then he's six feet below the natural grade. So, if the total structure height is 41 feet, he's actually 35 feet above the natural grade.

Dyck asked for clarification from Mack. When they are building on a hillside, do they have to meet the 35 foot all the way around the whole structure.

Mack said yes.

Dyck commented the other part that would be difficult to address was the accessory structure that far exceeded the 18 feet height restriction.

Smith said he didn't address that in the presentation because when they started the project, they had a couple months to massage the application. He wasn't familiar with drip lines but the 41 feet from the highest point to the lowest point of the foundation.

Parmeter said the drip line would be to the natural surface right now. So, if they were to drop it into the dirt 6 feet, that would take them to 35 feet, but they would be digging into the existing surface for the walk out area. With dropping the driveway down, it would drop the house down, that would put them at 41 feet to the dripline.

The applicants discussed the topography and the findings of fact. They said they wanted to stay at the 41 feet and if he does an accessory building, and attaches it, 35 feet is kind of moot as long as it's attached. So, they would be looking at a 6-foot variance.

Smith said he would like to modify the application and bring it back before the board.

Dyck said to come back with a more detailed application so they can walk through it correctly.

Noble commented that if the board denies the application, they would have to wait a year to reapply.

The applicants stated they would like to table the application for 30 days.

Nobel said to keep in mind that they need to address all nine of the criteria.

APPEAL 22-02
7:09:PM

An appeal by Georgia G. Otten, Paul Roybal, and Foy's Grandview Estates, regarding the Zoning Administrator approval of an Administrative Conditional Use Permit (FACU-22-47) on June 2, 2022, for short-term rental housing. The property is located at 44 Roybals Way, Kalispell, MT within the Lower Side Zoning District and contains approximately 1.02 acres. The property is zoned R-1 (*Suburban Residential*)

STAFF REPORT
7:09 PM

Erik Mack reviewed the Staff Report Appeal-22-02 for the board.

BOARD QUESTIONS
7:11 PM

Dyck stated they do not have the original staff report.

**APPLICANT
PRESENTATION**
7:12 PM

Randy Snyder, 8090 Highway 35, an attorney in Bigfork represented the appellants. He handed out some information to the board and stated he would go through it with them. He acknowledged that there were probably no more controversial subjects in the western United States right now than short-term or vacation rentals. They are the subject of zoning regulations with which the board must wrestle, the subject of disputes between neighbors, the subject of legislation, and they are the subject of regulations by homeowners' associations. He stated that he is not naïve, and the clients, and the HOA are not naïve to the fact that following the long discourse of Flathead County deciding to enable short-term rentals and providing the regulations under which they would be applied for, reviewed, and allowed, that process has proceeded fairly seamlessly, and almost none of them are denied. Of those that are approved and appealed, he was not aware of any that have been declined or refused. Flathead County does its job, very admirably, in terms of accepting and processing applications. If we are going to go by the strict guidelines that Flathead County allows and requires, that is the reason why they are here this evening, not just because neighbors don't like it or because covenants don't allow it. In this particular case, the applicants submitted an application in an area of a fairly exclusive, private subdivision, where the homes are large, the parking is not. The access is not particularly good. He pointed out the access lane and the driveway in the handout and stated they don't see the size of the entire house which can hold more than two cars. He pointed out a screenshot taken from his client that shows what is actually being done for parking. It spills out into the driveway, people stop in the driveway, it blocks and obstructs the driveway, all due to the vacation rental. It blocks and obstructs the road. This was one of the grounds that the homeowners said wasn't going to work in this particular case because there is inadequate parking. If the statute says it needs two spaces, there are two spaces. That doesn't mean in reality that it's adequate. And in reality, that hasn't been what's occurred. Flathead County Zoning Regulations, Section 2.06.040 (4) and (5), in his opinion were not followed. Number 4 allows for issuance of an administrative permit if there is no opposition. The very next subsection says, if there is opposition, then it goes to the Board of Adjustment. That didn't occur. Flathead County Zoning Regulations were not followed. Mack is correct in observing that, yes there is some wobbling, if they satisfy this and satisfy that, then we can issue the permit. That's not what's intended by statute. If you read (4) and (5) together, it says if there is no opposition, issue the permit, and (5) says if there is, take it to a hearing.

Had that occurred, we wouldn't be in this situation. There has been problem after problem that the owners have attempted to bring to the board. The impact to the neighbors was not acknowledged or addressed, the legal risks to the common area boat slips was ignored. The permit was issued, and the problems immediately occurred. Cars parked in the street, obstructing the driveway; there has been loud, obnoxious activity in the evening hours; the renters have been using other driveways as a turnaround; that's not allowable. We can't be authorizing renters to come in every weekend, every night and use and abuse the neighborhoods. That's not what the statute is intended for. Mr Roybal notified staff of the incidences and was informed they were all forwarded to the Code Compliance Officer. They took no action. Several owners filed an appeal on June 14th. He read from the zoning regulations, stating that if an appeal were filed, the vacation rentals would stop, that hasn't happened. The problem is that this is a private subdivision, relying on Flathead County Zoning Regulations. If the county itself can't follow its own zoning regulations, then the homeowners shouldn't be aggrieved to have to deal with the consistent and continuous violations.

Paul Roybal, 100 Roybals Way, spoke of the history of the property and what was expected of the homeowners. He spoke about the covenants and his conversation with the short-term rental homeowner. He read from the covenants and spoke of the intent. He stated all the homeowners have complied with the covenants. After the application for a short-term rental moved forward, his conversation with the applicant hit a wall, so he brought it to the rest of the homeowner's association. Based on that, the homeowner's had a special meeting to vote upon everyone's understanding of the covenants. Every homeowner spoke in opposition of the short-term rental and voted for a correction and amendments to the covenants to specifically have the language to protect them now and in the future. He spoke of the importance of the covenants and felt the short-term rental was wrongly approved. The county doesn't pay for the road maintenance, it's a private road that the eight homeowners pay for the road maintenance, the weeds, and the upkeep of the lakefront. They have a private marina that the covenants specify that anybody on parcel A is to have a homeowner present with them, to protect them from liability. Basically, he owns his home, and they bought the 20 acres behind them to protect their investment. Once the lot next to the Coopers was built and he lost his view to the west, he went and applied for the short-term rental. He has since listed his home for sale, and he threatened other homeowners with attorneys. They have had four and a half months of chaos that they haven't had to deal with for the last 24 years of being on the hillside. He was asking the board to review everything thoroughly, to hear the voices from the people that live there.

Georgia Otten, 150 Roybals Way, expressed her concerns about liability. She spoke about the highway traffic and parking. She was concerned that each homeowner had a piece of the dock and with renters having a key, they would never know who had keys with access to the dock. They have valuable equipment stored down there. She was also concerned about kids swimming without a lifeguard. She understands the emotions but it's a liability. She said the covenants

are very important and Mr. Cooper knew about them. She read a portion of an email the Mr. Cooper sent to her that she was upset about. It had to do with a zone change that she had applied for.

PUBLIC COMMENT
7:33 PM

Clint Walker, 37 Roybals Way, has lived on the property for 15 years. He worked in the development industry and his job was to measure the impact on the community. He said they are a community of eight and when Mr. Cooper moved in, he knew what the rules were. He likes the HOA rules because it gives him a predictable future of what the outcomes are or what can happen with the property or who can park what out in front of their home in a small private community. He read an email from Mr. Cooper and spoke about his own home being empty for two years when they moved to North Carolina. He didn't rent it out. He spoke of the impact they've had in the month of July due to the short-term rental. Its disruptive.

Melissa Roybal, 100 Roybals Way, wanted to reiterate what her dad said, with privacy, parking etc. She gave examples of what she had witnessed.

STAFF REBUTTAL
7:53 PM

Mack had a few points of clarification. He said staff reached out to the homeowners shortly after the appeal application was submitted and told them they needed to stop renting. They didn't do that at the time, and after several more complaints, staff reached out again, and they did stop renting. He also stated that the county does not enforce the covenants. He read Section 2.04.040(5) from the zoning regulations to clarify staffs' position. When the permit was issued, he felt the application that was submitted and the conditions that were placed on it met the criteria. That may not be the case based on what we are hearing tonight, but we don't know that at the time, we base it on the information we have at the time. If they are violating their conditions, we can't foresee that. We do over 100 of these a year, and 99 of them are fine. The other thing he wanted to clarify was that if the person renting their house sells the property, the short-term rental goes away because it does not transfer if the home is sold.

Noble asked Mack to read the section of the zoning regulations again.

The board and staff discussed the opposition letters that were received for the appeal. The Coopers were the only letter received. There were several opposition letters received for the short-term rental application. A member of the audience stated that every homeowner wrote a letter of opposition for the short-term rental application.

Davis asked Roybal about the ownership of the docks.

Roybal clarified.

Davis asked Mack about the docks being on a separate parcel and does that carry over to the short-term rental.

Mack said not if it wasn't included in the application. As far as he knows, it was not included in the application.

Davis commented that potentially they have no lake access, and if they applied for it separately, the same requirements as far as parking etc. would apply to the 1/8 ownership.

Mack said every owner would have to sign that application too.

Noble asked if they filed the grievances in the allotted time period and did they demonstrate how they were impacted.

Mack read the section of the regulations again.

Noble asked Roybal about his being negatively impacted and his reference to a #8.

Roybal said all of the roads, the lakefront, and the water system are all shared by the homeowners; that's all-common area that they are all legally bound for liability.

Noble asked if he was referring to number eight on the appeal application.

Roybal said number eight was the point about traffic, liability, and the access.

Dyck read a paragraph from the appellants application for clarification.

Noble wanted to make sure they provided documentation that they were adversely affected. He felt staff went through the administrative process adequately. He stated then the homeowners appealed that decision and now if the board holds up their appeal, then the short-term rental owner would have to come back and re-apply. He reiterated they do not have anything to do with covenants. If this short-term rental came to the board at a future date, would they grant it.

Dyck said it would have to meet the criteria. They have to follow all the criteria in front of them. He commented that the Supreme Court ruled that short-term rentals are residential. It's something that needs to be fought in legislation, not with the Board of Adjustment.

Mack commented that it states in M.C.A that short-term rentals are residential.

Noble felt that Mack acted within his authority. He said that following through with the rules and the process, they seem to have met the criteria for an appeal.

Mack said the lakeshore property wasn't part of the approval. He wanted to note that it wasn't part of the approval or what staff reviewed.

Davis asked if the eight owners of the lakeshore parcel had to demonstrate two parking spaces for a short-term rental.

Mack said each owner would have to sign off on the application if it's used as part of a short-term rental, but the parking would be at the house since they aren't actually staying on that parcel.

Dyck commented to the board they needed to decide if they felt Mack was correct in approving the administrative conditional use permit and they needed to decide if the neighbors are being impacted.

Noble said Mack had done his job, he doesn't disagree with Mack's decision but there is the criteria for an appeal and they have met that.

Davis asked if the Code Compliance Officers had any findings.

Mack said the second time staff reached out to the applicants, they stopped renting immediately. Unfortunately, the Code Compliance Officer that reached out to them no longer works in our office, so he didn't know the answer to that.

Liechti didn't have anything to add. He didn't see anything to overturn the appeal, he felt there was enough there to at least get them on a violation.

Davis commented that after they were notified of the appeal they continued to rent.

Dyck asked if they could change the conditions of the permit to make it more stringent.

Mack said yes, that is an option.

Liechti said at this time he would be in favor of denying the appeal but adding in conditions.

Davis commented that he was leaning toward approving the appeal. He agreed that Mack checked his boxes, and the appellants also checked their boxes. There are concerns with how the rental has been operating to date, and technically they have been operating on a parcel that they don't have a permit for. They've also been operating the short-term rental after the appeal process, even after they were notified that they shouldn't. He felt it was worth looking into.

Noble asked for clarification on the process.

OLD BUSINESS
8:46 PM

Mack went through the amendments to the short-term rental section of the zoning regulations that staff is proposing. He asked the board if they had any questions, concerns, or suggestions.

Liechti said it was a good start, but he wanted to know what constituted a violation. He gave an example.

Mack said the problem with trespassing is that it's against the law, but it is not a zoning violation.

The board and staff discussed violations at length, criminal versus zoning.


Davis wondered if there was some kind of recourse for homeowners, he felt they needed to consider whether the short-term rental owners have the right to defend themselves.

NEW BUSINESS
8:57 PM

Mack spoke about staffing in the office.

ADJOURNMENT
9:00 PM

The meeting was adjourned at approximately 9:00 pm on a motion by Noble. The next meeting will be held at 6:00 pm on September 6, 2022.



Cal Dyck, Chairman



Mary Metzger, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED on September 6, 2022.